

1609/1821

*A Vindication of the Proceedings of
the University of OXFORD,
against the Allegations of an Act of
the Council of the City of OX-
FORD, Dated Sept. 6. 1703.*

By a Private Hand.

IT is well known, That the University have made several Remon-
strances to the City, of the Indignities offered to them, in their
last publick Procession by many of their Members; and that they
allowed them sufficient Time for making a just and reasonable Sa-
tisfaction, before they proceeded to the least Severity or Censure.
But the City have all along contented themselves with slight Enquiries,
and groundless Excuses, and at last have dismissed the Cause, till the Uni-
versity shall think fit (for so one would be apt to believe they expect) to
appear at the Bar of their Court, or Council, to prefer an Information
against their Members, whilst they sit as Judges.

The University have likewise made several Overtures and Conde-
scensions, towards a private and amicable Accommodation, to which the
City have indeed returned empty Expressions of Esteem and Respect, &
desire of maintaining a good Understanding and of doing Justice, and
making Satisfaction. But after a Year's Deliberation, they have never
made the least Concession to any of the Demands of the University, or
the least Advance or Step towards Satisfaction. They always took care
to reserve themselves in general and indistinct Replies, cloag with ambl-

guous Expressions, and liable to different Constructions ; till at last, when forced by the late Message from the University, to explain themselves, they absolutely disclaim all Methods of private Accommodation, and that too upon the most groundless and unjust Allegations ; yet after all, they (Good Men) are able to *Satisfy themselves, that they have sought Peace ; and, by all means which became them, have laboured to obtain it.*

The Messages and Overtures from the University have always been directed to the City, as a Body, and presented with as much Decency and Respect, as any that have been tendered to the University by the City ; For in this they have been treated as a *Body no ways subordinate to the University*, whether they are so, or not : which abundantly demonstrates, with what Modesty and Justice the University is charged, *for not treating the Members of the City, as Members of a Corporation.*

The highest Demands of the University, by way of Satisfaction and Privilege too, imply no more, than a Subscription to a Right of Precedence in Publick Processions, and amicable Endeavours, to dispose their Brethren to the same Recognition, in order to have it Ratified by the Seal of the City, for the avoiding of future Animosities and Disputes. Now this is a Claim so Just and Reasonable, that an indifferent Judge must, upon the first View, pronounce it Indisputable. For were the super-eminent Jurisdictions expressed in our Charters, and without Interruption exercised by the University, even within the Verge of the City, to be considered ; Or were the Dignity of the Two Bodies to be compared, the One being composed of Members engaged in the Studies and Profession of the most Noble and Useful Sciences ; the Other consisting partly of Creditable Retail Trades-men, but for the most part of the lower Rank of Mechanicks, Reason and Equity must give the Pre-eminence to the University. Besides all this, the Precedence of the University in their Ancient Processions (as our Records inform us) has been maintained for such a tract of Time without any Interruption or Contest from the City, that it now seems to become the Priviledge of the University, from the Force and Authority of Prescription. And in this Sence we affirm and declare, that the Scheme delivered in on the 12th of June last, is Warranted by former Precedents : This is so powerful an Argument against the Pretension of the City, that when several of their Members have been pressed with it, they have not only declined the Inspection of the University Records, but could never give themselves the trouble of examining those of the City.

But now since Precedence alone is the Subject in Controversy, and the University makes out so ample a Claim to it, it may justly be wonder'd, how a Subscription, or Recognition of the University's Right can be interpreted a *Breach of Trust* in the Citizens, much less is it a Breach of their Corporation Oaths. The City can by no means claim a Right of Precedence

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by Prescription, much less can they pretend, that it is an Article of their Charter or Corporation Oaths; for neither of these interfere with the Recognition of the University's Right, and therefore the *Plea of Publick Trust*, and of *Corporation Oaths* in the present case, must be advanced as a Scare-Crow, to deter the City Members from giving the University any manner of Satisfaction. In a word, the Right of Precedence is so clear on the part of the University, that so far as Oaths are Concerned in this Affair, we are perswaded, that not only those Members of the City, that have born the Chief Offices of Mayor, Aldermen, Assistants, Bayliffs and the like, but also so Other, the most Wealthy, Legal, or Substantial Citizens, that are likewise obliged to take the same Oath, will find themselves engaged by it, to comply with what has been demanded of them; for thereby they swear, *Truly to observe and keep all manner of Lawful Liberties and Customes of the University, which the Chancellors, Masters and Scholars have reasonably used, without any gainsaying, saving their Fidelity to the Queen's Majesty.* Which is the Form of their Oath.

In this Oath there is no other Reserve, but of Fidelity to the Queen's Majesty; so that in case any of the City Privileges seem to interfere with those of the University, those of the City are to give way, and those of the University are to obtain, take place and be observed by the Citizens, notwithstanding the pretended Opposition between them.

As for the obtaining the Common Seal to any Instrument, it is well known, it is not Practicable, but by Consent of the Majority in Council, and then it becomes an Act of the City, and when 'tis an Act of the City, 'tis no otherways distinguished from the City, than the Acts of any Body are distinguished from the Body its self; and therefore it cannot well be conceived, how this should be interpreted, *An Abandoning of the City*, unless the City can truly and properly *Abandon* its self by its own Acts and Concessions.

As for the Form of Subscription, it was drawn up, and expressed in very moderate and easy Terms, but had the University been so unreasonable as to have demanded a Subscription to a Blank, it could have deserved no higher a Reflection, than that of endeavouring to obtain the Seal of the City, *To any Form which the Delegates of Convocation shall please to dictate.*

And as for private Application to particular Members, it is no secret in the University, that *Some* Governours of Colleges have been Addressed to by the Friends of the City (tho' without the least Success) to discountenance the Proceedings of the Delegates, to endeavour to procure a Revocation of their *Programma*, and in a word, to Abolish the Delegacy: But its more notorious, what Pains and Labour has been bestowed by the City, where Relation, Pretence of Interest, or Authority, could make

way, to engage the Members of Convocation to desert the present Controversy, to tempt them to abandon their undoubted Privileges, and dismiss the Cause without requiring the least Satisfaction; so that the City-Council might first have apply'd their Reflection to the Members of their own Body, viz. *That the means they have us'd to compass their end have been very Extraordinary, tho' perhaps not without Example in the times of their Predecessors.* On the other hand, we know of no private Applications, but what pass'd in common Conversation, by way of Argument and Debate, wherein the Merits of the Cause were consider'd on both sides, with equal freedom, and nothing offer'd beyond a friendly Perswasive. And as those that have Acted thus will at last appear to be, the best Counsellors as well as Friends, to their City Acquaintance: so we are perswaded, these Conferences have possess'd them with a more clear and just Notion of the Merits of the Cause on both sides, than they could ever have from the late Papers produc'd in their Councils: For these being form'd by a single Person, and perus'd and consider'd by a few, pass'd at last into authentick Acts upon a cursory Reading, which we are assur'd from unquestionable Authority was the case of this Solemn Act of Council, it being enter'd into the Council-Book, with only a silent Assent of the Chamber, upon no other Authority but an hasty Reading, and *Ira est, Samuel Thurston.*

It cannot easily be resolv'd what this Paper intends, by charging the University Delegates with *Declining all Judgment but their own, and declaring their Opinion, and giving Judgment:* for 'tis hop'd, those Overtures and Terms of Accommodation propos'd by them, cannot deserve so harsh a Censure, and it would be extremely unjust to stile this the *making themselves Judges over the City:* But if to decline all Judgment but their own, is barely levell'd against the Delegates refusal to submit the Right of Precedence to a Private Reference, then the City may assure themselves they will never be sham'd of a Charge of this Nature. For they are fully convinc'd, that the University is in the legal Possession of this Privilege, and therefore tho' they have made several Overtures to the City to engage them in the Recognition of it, upon as easy terms as possible, yet after this they account it highly Ridiculous, to submit clear and undoubted Privileges to private References; but instead of this, shall never be afraid to exert those Powers that are invest'd in the University, to prevent the Publick Invasion of this, or any other Privileges.

Again, since the University have been always in the uninterrupted Possession of this Privilege, and want no means of their own to support it, the City cannot expect, that the University should become Plaintiffs in a Foreign Court; But if the City are resolv'd to hale them before another Tribunal in the Defence of their just Privileges, They will undoubtedly

doubtedly pay a just Deference to Authority, and expect the Decision of their Superiors, and that too with a Prospect of as good Success to the University, as any their Predecessors met with in Cases of the like Nature.

It must be confess'd, the Delegates have given Judgment and pass'd a Censure, but not without as full Information and Evidence of Facts and their Circumstances, as their Predecessors ever requir'd in Causes of this Nature, and such as are abundantly sufficient to determine them, with regard to the Persons it passes upon: But then the Judgment given, and the Censure pass'd, is in reality pronounc'd upon their own Members, for 'tis a general Prohibition upon the Members of the University, from holding Commerce with *some particular* Members of the City, for Indignities receiv'd from them; and tho' by consequence this Judgment or Censure, may affect these City Members, to a high degree, yet unless they can set forth an undoubted Right to the Custome of *any particular Member* of the University, the Judgment or Censure cannot so properly be call'd a Judgment or Censure pass'd upon them, as a Law, or Prescription, to their own Body. And in this case the University may regulate and limit their own Body upon just Causes and Reasons, without being peremptorily charg'd with *Giving Judgment, and inflicting the severest Punishments upon several Members of the City, without hearing them, or proof that the Matter which they demanded was their Right, or that those Persons had Involed it, and that, (as it seems to this Council) for not complying with a Scheme, which was not publish'd until several Months after these Proceedings.*

This is truly a very black Inditement, and therefore deserves some particular Remarks to represent the Injustice of it.

These Passages seem principally to point at the Delegate's *Programma*, and pronounce that Prohibition of Commerce, a *giving Judgment*, and *inflicting the severest Punishments upon several City Members*, with the addition of several heinous Aggravations.

As first, *without hearing them*; Now it's manifest they could not well be heard, in a publick way, either by the University or City. As to the City's hearing them, it could not be expected the Delegates would, nor indeed by their Oaths could they, condescend to prosecute them at their own Bar, without the Guilt of Perjury; the Chancellor being the sole Judge between Party, and Party, where a Privileg'd-man is concerned; and had the Delegates of Convocation adventured to summon them before their own Tribunal, this (in the stile of this Council-Act,) must be interpreted as a *Judgment of their own*, and consequently such as *with Justice to the City this Council cannot admit of*. It's certain, had these offending Members voluntarily demanded to be heard by the Delegates, it would have been readily granted, and they would have been heard with the greatest Impartiality: But as nothing of this Nature appear'd, the

the Delegates were at Liberty to Proceed pursuant to the Powers invested in them by the Constitution of the University.

Secondly, *Without proof as to Right and Fact*: As for the matter of *Right*, it has already been consider'd; but as to *Fact*, it's highly incredible, the Delegates should want, or neglect Information, in a Matter that was visible to Multitudes of Persons, as well City as University Members. It's well known, the University entred the Town in Possession of the Post of Honour, and at the same time the City had, by consent, fix'd their whole Body on the Right, upon a Prospect of commanding Precedence from the University; But their Addreses to Her Majesty being perform'd, Mr. Vice-Chancellor demanding the Advance of their Body, before that of the University, They refus'd, and disputed it to the last; so that Her Majesty's Body-Coach having Orders to move, and the University being obliged to march forward, to make way for it, most of the City-Members in Scarlet, not then content with the Post which they had taken on the Right, broke into the Doctors Ranks, to the great disorder of the University Procession. This was so publick and notorious, that it has never yet been deny'd. And This, and other considerable Affronts and Disorders were laid before the Delegates, by Persons of unquestionable Credit; all which are represented in the University *Programma*, as the Grounds and Reasons of its Sanction: therefore it is highly Insolent for the Author of this Paper to affirm, *that Judgment was given, and Penalties insisted for not complying with a Scheme, which was not publish'd until several Months after these proceedings.*

Having said thus much, it may be added, that these Proceedings of the Delegates are not new, and without Precedent, but exactly conformable to the Process of their Predecessors in Matters of this Nature, as the Records of the University abundantly set forth, and in a word, such as have been Warranted by the Council-Board at *Whitehall*, for which we appeal to the very Records of the City; and therefore they may depend upon it, notwithstanding this unmannerly Calumny, the Delegates will rest in, and abide by their Proceedings.

There nothing now remains, after so many *City Compliments*, but that the Sentence against the discommon'd Members should be revok'd, and that for very important Reasons, *viz. That they may be at liberty to treat freely, and without Discredit to their Concessions.* To this it may reasonably be demanded, (since 'tis not express'd) with whom these free Treaties are to be carried on and transacted? Certainly not with the University Delegates, because, in the preceding Paragraph, the City Members disclaim all further Methods of private Accommodation; and upon this View, it seems to be a piece of Cant to talk of making creditable Concessions, when they have not hitherto made one step towards any Concession, and suspended all

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Conferences and Debates, *Till some Person or Power shall appear, they mean exclusive of the University, who shall have Right to Judge of them.*

In a word, it's evident no Concession, no Satisfaction has been made on the Part of the City, or the Discommon'd Members; but on the other hand, the whole Corporation have made themselves Parties, by declining all further Acknowledgments, as well as Intercourses or Correspondence, and therefore should the Delegates reverse the Sentence, and recal their *Programma*, (as certainly, *upon this Act of Council*, they never will) it might justly be interpreted, not only a giving up the Cause, but a tacit Condemnation of their own Proceedings; and then the City might in Triumph (according to the Stile of this Paper) fix the Right of Precedence *upon Oaths and Trusts*, and for ever establish, and transmit it to their Successors as an undoubted City-Privilege.

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...the City of the District of Columbia, by authority of the Board of Commissioners, do hereby certify that the following is a true and correct copy of the original as the same appears on file in the office of the Board of Commissioners, to-wit:



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